

Response to Restriction Requirement
EMC-014
Application No. 10/812,262
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REMARKS

Claims 1-8 were presented for examination. The Office Action dated March 31, 2006 states restriction is required to one of four groups: (I) Figures 1-7B; (II) Figures 8-11B; (III) Figure 12; and (IV) Figures 13A and 13B.

Applicants herein make a provisional election of Group IV, with traverse as set forth below, and expressly reserve the right to pursue any non-elected claims in a co-pending divisional application.

Applicants respectfully traverse the restriction because it is improper for at least the following reason:

According to MPEP § 806.05(c), where a combination *as claimed* sets forth the details of the subcombination *as separately claimed*, there is no evidence that the combination is patentable without the details of the subcombination. In such a case, the inventions are not distinct and a requirement for restriction must not be made or maintained, even if the subcombination has separate utility (see MPEP § 806.05(c) I.).

In the Applicants' application, the combination (i.e., the adjustable side rail), as claimed in claim 5, sets forth the details of the subcombination (i.e., the tray) as separately claimed in claim 1. Accordingly, there is no evidence that the combination is patentable without the details of the subcombination. In fact, if one removes the details of the subcombination from claim 5, nothing remains of claim 5 except "a side rail portion for connecting to a first mounting rail of the cabinet rack." Clearly, the combination requires the particulars of the subcombination for patentability. Therefore, the inventions are not distinct and a requirement for restriction must not be made or maintained.

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The restriction is also improper because it prevents the Applicants from electing claims that do not read on any one of the identified Groups of figures. More specifically, claims 5-8, as originally filed, do not read on any one identified Group of figures – rather, such claims recite a combination of features that appear in different Groups. Therefore, the restriction requirement, if upheld throughout prosecution, immediately eliminates claims 5-8 from prosecution, although such claims are supported by the Applicants' application. Said another way, the restriction requirement, as defined, does not allow the Applicants to pursue claims 5-8; the Applicants are given no choice and no opportunity to pursue the patentability of these claims. Any restriction requirement that prevents the election of originally filed claims is clearly faulty. Therefore, Applicants respectfully request that the restriction be withdrawn.

Respectfully submitted,

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